

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRIDGET WALKER, et al.,

Plaintiffs,

v.

Case No. 10-12596

CARMEN EVANS, et al.,

Defendants.

**ORDER (1) GRANTING PLAINTIFFS' MOTION FOR SUBSTITUTION OF PARTY
PLAINTIFFS, (2) DIRECTING THE CLERK OF THE COURT TO AMEND THE
DOCKET, (3) GRANTING IN PART PLAINTIFFS' MOTION FOR DEFAULT
JUDGMENT, AND (4) SETTING DATE FOR SECOND HEARING ON MOTION FOR
DEFAULT JUDGMENT**

Before the court is Plaintiffs' motion for substitution of party Plaintiffs, filed on August 9, 2011, and Plaintiffs' motion for default judgment, filed on July 8, 2011. The court held a hearing on the motion for default judgment on August 10, 2011. The court will grant the motion for substitution, and will grant in part the motion for default judgment.

As three of the four real parties in interest to the suit on Plaintiffs' side were minors at the time the complaint was filed, they sued using next friends.¹ See Fed. R. Civ. P. 17(c). Plaintiffs' motion avers that these three parties have reached the age of majority, and therefore seeks to substitute them for their next friends. Although Federal Rule of Civil Procedure 25 does not explicitly contemplate this substitution, the court sees no reason why substitution would not be appropriate, under either that Rule or

¹ The fourth Plaintiff is the mother of the deceased Christopher Walker, who was killed in the incident that underlies this lawsuit.

under Rule 15 permitting amendments to the complaint, when minor parties reach the age of majority. See *Erie R. Co. v. Fritsch*, 72 F.2d 766, 767 (3d Cir. 1934) (applying New Jersey law and holding amendment proper and judgment valid where the plaintiff was a minor without a next friend at the time the suit commenced, a next friend was appointed, and upon reaching the age of majority “an amendment [was] allowed and judgment was entered for” the plaintiff); *Burns v. Phillips*, 50 F.R.D. 187, 188 (N.D. Ga. 1970) (finding Rule 25 does not permit substitution of guardians, but Rule 15 does); see also *Ju Shu Cheung v. Dulles*, 16 F.R.D. 550, 553 (D. Mass. 1954) (“It appears from the complaint that the plaintiff has now passed his 21st birthday. I will entertain a motion for the removal of Ju Wah Tau as next friend, if presented.”). Therefore, the motion for substitution will be granted and the clerk of the court will be directed to amend the docket to reflect the change.

Only two of the four Plaintiffs appeared at the appointed time and place for the hearing on the motion for default judgment pursuant to Rule 55(b)(2), even though Plaintiffs’ counsel believed that all four would be present. Because Malik Slater and Leon Merriweather did not appear, the court will be required to hold an additional hearing to receive evidence regarding their injuries. During the hearing Bridget Walker and Kejuana McCants each testified to their injuries. The court also requested that Plaintiffs’ counsel submit a supplemental brief providing some legal basis for the quantification of damages sought by the motion. The court suggested that the brief could review, for example, jury or bench verdicts, or settlement amounts, from similar cases involving comparable injuries. Plaintiffs’ counsel obliged, and in fact filed the brief the day after the hearing, on August 11, 2011. In view of the need for additional

consideration of the matter, the court will grant the motion in part, with respect to Plaintiffs who appeared and testified, but will defer a decision with respect to the other Plaintiffs and on the amount of the judgment until after the second hearing has been held. Plaintiffs who testified at the first hearing on the motion are not required, but of course are permitted, to attend the second hearing. Accordingly,

IT IS ORDERED that Plaintiffs' "Motion for Substitution of Party Plaintiffs" [Dkt. # 39] is GRANTED. The clerk of the court is DIRECTED to amend the docket to reflect the substitution. Malik Slater is substituted for Kenota Slater, Leon Merriweather is substituted for Carol Merriweather, and Kejuana McCants is substituted for Liz McCants.

IT IS FURTHER ORDERED that Plaintiffs' "Motion for Default Judgment" [Dkt. # 33] is GRANTED IN PART. It is GRANTED with respect to Plaintiffs Bridget Walker and Kejuana McCants. Default judgment will be entered following a determination of the amount of the judgment, as described above.

Finally, IT IS ORDERED that counsel is DIRECTED to appear for the second hearing on the "Motion for Default Judgment" [Dkt. # 33] on **August 23, 2011, at 10:00 a.m.**

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: August 15, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 15, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522